

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BOBBY T. SHEPPARD,)	
)	CASE NO.: C-1-00-493
Petitioner,)	
)	JUDGE RICE
v)	
)	MAGISTRATE JUDGE MERZ
MARGARET BAGLEY, WARDEN,)	
)	
Respondent.)	

**THE WARDEN’S RESPONSE TO “PETITIONER’S OBJECTIONS TO THE
SUPPLEMENTAL REPORT AND RECOMMENDATIONS OF DECEMBER 16, 2004”**

Respondent Margaret Bagley herein responds to Petitioner’s objections as described above.

A memorandum in support follows.

Respectfully Submitted,

JIM PETRO (0022096)
Ohio Attorney General

s/Charles L. Wille

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COUNSEL FOR THE WARDEN

ARGUMENT IN RESPONSE

The Magistrate Judge correctly recommended denial of relief on Sheppard's Seventh Ground.

Sheppard argues that the Magistrate Judge's recommendations "apply the wrong standard for determining whether Sheppard established prejudice from Juror Fox's misconduct." Sheppard's argument is mistaken. The Magistrate Judge applied the correct standard of review. The Magistrate Judge concluded that the adjudications of the state courts did not contravene clearly established federal law nor involve an unreasonable determination of the facts in light of the evidence presented at trial. Report and Recommendations at page 84. Moreover, the Magistrate Judge correctly afforded a presumption of correctness to the trial judge's finding that Juror Fox was competent to serve. Smith v. Phillips, 455 U.S. 209, 217-218 (1982); Patton v. Yount, 467 U.S. 1025, 1036 (1984) (reversing decision of court of appeals that jury impartiality is a "mixed question of law and fact"), citing Rushen v. Spain, 464 U.S. 114, 120 (1983) (state court determination that juror's deliberations were not biased by ex parte communications is a finding of fact); Mason v. Mitchell, 320 F.3d 604, 636 (6th Cir. 2003) ("The trial court denied the motion [for a new trial], finding that the jurors' conduct did not impair Mason's ability to receive a fair trial. We must presume that the trial court's factual determinations are correct unless Mason rebuts that presumption with clear and convincing evidence.").

REQUEST FOR RELIEF

For all the foregoing reasons, the Warden respectfully requests that the Court overrule Sheppard's objections and deny with prejudice Sheppard's petition for a writ of habeas corpus.

Respectfully Submitted,

JIM PETRO (0022096)
Ohio Attorney General

s/Charles L. Wille

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing "*Response to Petitioner's Objections to the Supplemental Report and Recommendations of December 16, 2004*", was sent electronically and via first-class U.S. Mail, postage prepaid, this 25th day of January, 2005, to:

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